IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 5516 OF 2006.
IN
FIRST APPEAL NO. 3186 OF 2006.

M/s.Kothari Associates. ... Applicant.
Versus.
Praveen Joseph Pathe and others. ... Respondents.

Shri S.R.Page for the Applicant.

Shri Madhav Jamdar for the Respondents Nos.1 and 3.

CORAM : ABHAY S.OKA, J.

DATED : 24th January, 2007.

P.C.:

1. Rule. Shri Jamdar waives service for Respondents Nos.1 and 3. The Respondent No.2 has died. However, the Respondents Nos.1 and 3 are the legal representatives of the Respondent No.2.

2. The impugned decree is a money decree. Shri Page appearing for the Appellant states that the partners of the Appellant were convicted for offence under section 138 of the Negotiable Instruments Act, 1881 and as per the order of the Criminal Court, the Appellant has deposited a sum of Rs.1,50,000/- in the Court. It is not in dispute that the order of conviction has been set aside in the Appeal. It is thus obvious that the Applicant will be entitled to withdraw the said amount which is deposited in the Criminal Court. Considering the nature of transaction between the parties, stay cannot be granted unless the entire

decretal amount is deposited by the Applicant in the trial Court. Sufficient time can be granted to the Applicant to deposit the amount.

3. Hence the Civil Application is disposed of by passing the following order:

i) There will be interim relief in terms of prayer clause (b) subject to condition of the Applicant depositing the entire decretal amount in the trial Court within a period of three months from today. If the amount is not deposited, the interim relief will stand vacated without further reference to the Court.

ii) If the amount is deposited, liberty to the Respondents Nos.1 and 3 to take out application for seeking permission to withdraw the amount.

iii) There will be no order as to costs.

Judge.